

designated contract market, derivatives clearing organization, swap dealer, or major swap participant shall be readily accessible via real time electronic access by the registrant throughout the life of the swap and for two years following the final termination of the swap, and shall be retrievable by the registrant within three business days through the remainder of the period following final termination of the swap during which it is required to be kept.

(2) Each record required by this section or any other section of the CEA to be kept by a non-SD/MSP counterparty shall be retrievable by that counterparty within five business days throughout the period during which it is required to be kept.

(f) *Recordkeeping by swap data repositories.* Each swap data repository registered with the Commission shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the swap data repository and all swap data reported to the swap data repository, as prescribed by the Commission. Such records shall include, without limitation, all records required by part 49 of this chapter.

(g) *Record retention and retrievability by swap data repositories.* All records required to be kept by a swap data repository pursuant to this section must be kept by the swap data repository both:

(1) Throughout the existence of the swap and for five years following final termination of the swap, during which time the records must be readily accessible by the swap data repository and available to the Commission via real time electronic access; and

(2) Thereafter, for a period of at least ten additional years in archival storage from which they are retrievable by the swap data repository within three business days.

(h) *Record inspection.* All records required to be kept pursuant to this section by any registrant or its affiliates or by any non-SD/MSP counterparty subject to the jurisdiction of the Commission shall be open to inspection upon request by any representative of the Commission, the United States Department of Justice, or the Securities and Exchange Commission, or by any

representative of a prudential regulator as authorized by the Commission. Copies of all such records shall be provided, at the expense of the entity or person required to keep the record, to any representative of the Commission upon request. Copies of records required to be kept by any registrant shall be provided either by electronic means, in hard copy, or both, as requested by the Commission, with the sole exception that copies of records originally created and exclusively maintained in paper form may be provided in hard copy only. Copies of records required to be kept by any non-SD/MSP counterparty subject to the jurisdiction of the Commission that is not a Commission registrant shall be provided in the form, whether electronic or paper, in which the records are kept.

§ 45.3 Swap data reporting: creation data.

Registered entities and swap counterparties must report required swap creation data electronically to a swap data repository as set forth in this Section. This obligation commences on the applicable compliance date set forth in the preamble to this part. The reporting obligations of swap counterparties with respect to swaps executed prior to the applicable compliance date and in existence on or after July 21, 2010, the date of enactment of the Dodd-Frank Act, are set forth in part 46 of this chapter. This section and § 45.4 establish the general swap data reporting obligations of swap dealers, major swap participants, non-SD/MSP counterparties, swap execution facilities, designated contract markets, and derivatives clearing organizations to report swap data to a swap data repository. In addition to the reporting obligations set forth in this section and § 45.4, registered entities and swap counterparties are subject to other reporting obligations set forth in this chapter, including, without limitation, the following: Swap dealers, major swap participants, and non-SD/MSP counterparties are also subject to the reporting obligations with respect to corporate affiliations reporting set forth in § 45.6; swap execution facilities, designated contract markets, swap dealers, major

swap participants, and non-SD/MSP counterparties are subject to the reporting obligations with respect to real time reporting of swap data set forth in part 43 of this chapter; counterparties to a swap for which the clearing requirement exception in CEA section 2(h)(7) has been elected are subject to the reporting obligations set forth in part 39 of this chapter; and, where applicable, swap dealers, major swap participants, and non-SD/MSP counterparties are subject to the reporting obligations with respect to large traders set forth in parts 17 and 18 of this chapter.

(a) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.* (1) For each swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the swap execution facility or designated contract market must report all required swap creation data, as soon as technologically practicable after execution of the swap. This report must include all confirmation data for the swap, as defined in part 23 and in § 45.1, and all primary economic terms data for the swap, as defined in § 45.1.

(2) If such a swap is accepted for clearing by a derivatives clearing organization, the derivatives clearing organization must report all confirmation data for the swap, as defined in part 39 and in § 45.1, as soon as technologically practicable after clearing. The derivatives clearing organization shall fulfill this requirement by reporting all confirmation data for the swap, as defined in part 39 and in this § 45.1, which must include all primary economic terms data for the swap as defined in § 45.1, and must include the internal identifiers assigned by the automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house.

(b) *Off-facility swaps subject to mandatory clearing.* For all off-facility swaps subject to the mandatory clearing requirement, except for those off-facility swaps excepted from that requirement pursuant to CEA section 2(h)(7) and those off-facility swaps covered by CEA section 2(a)(13)(C)(iv), required swap creation data must be reported as provided in paragraph (b) of this section.

(1) The reporting counterparty, as determined pursuant to § 45.8, must report all primary economic terms data for the swap, within the applicable reporting deadline set forth in paragraph (b)(1)(i) or (ii) of this section. However, if the swap is voluntarily submitted for clearing and accepted for clearing by a derivatives clearing organization before the applicable reporting deadline set forth in paragraphs (b)(1)(i) or (ii) of this section, and if the swap is accepted for clearing before the reporting counterparty reports any primary economic terms data to a swap data repository, then the reporting counterparty is excused from reporting required swap creation data for the swap.

(i) If the reporting counterparty is a swap dealer or a major swap participant, the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than: 30 minutes after execution during the first year following the compliance date; and 15 minutes after execution thereafter.

(ii) If the reporting counterparty is a non-SD/MSP counterparty, the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than: four business hours after execution during the first year following the compliance date; two business hours after execution during the second year following the compliance date; and one business hour after execution thereafter.

(2) If the swap is accepted for clearing by a derivatives clearing organization, the derivatives clearing organization must report all confirmation data for the swap, as defined in part 39 and in § 45.1, as soon as technologically practicable after clearing. The derivatives clearing organization shall fulfill this requirement by reporting all confirmation data for the swap, as defined in part 39 and in this § 45.1, which must include all primary economic terms data for the swap as defined in § 45.1, and must include the internal identifiers assigned by the automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house.

(3) If the swap is not accepted for clearing, the reporting counterparty must report all confirmation data for the swap, as defined in § 45.1, within the applicable reporting deadline set forth in paragraph (b)(3)(i) or (ii) of this section. During the first 180 calendar days following the compliance date, if reporting confirmation data normalized in data fields is not yet technologically practicable for the reporting counterparty, the reporting counterparty may report confirmation data to the swap data repository by transmitting to the swap data repository an image of the document or documents constituting the confirmation, until such time as electronic reporting of confirmation data is technologically practicable for the reporting counterparty. Beginning 180 days after the compliance date, the reporting counterparty must report all confirmation data to the swap data repository electronically.

(i) If the reporting counterparty is a swap dealer or major swap participant, the reporting counterparty must report all confirmation data as soon as technologically practicable following confirmation, but no later than: 30 minutes after confirmation if confirmation occurs electronically; or 24 business hours after confirmation if confirmation does not occur electronically.

(ii) If the reporting counterparty is a non-SD/MSP counterparty, the reporting counterparty must report all confirmation data as soon as technologically practicable following confirmation, but no later than: the end of the second business day after the date of confirmation during the first year following the compliance date; and the end of the first business day after the date of confirmation thereafter.

(c) *Off-facility swaps not subject to mandatory clearing, with a swap dealer or major swap participant reporting counterparty.* For all off-facility swaps not subject to the mandatory clearing requirement set forth in CEA section 2(h), all off-facility swaps for which the clearing requirement exception in CEA section 2(h)(7) has been elected, and all off-facility swaps covered by CEA section 2(a)(13)(C)(iv), for which a swap dealer or major swap participant is the reporting counterparty, required swap

creation data must be reported as provided in paragraph (c) of this section.

(1) *Credit, equity, foreign exchange, and interest rate swaps.* For each such credit swap, equity swap, foreign exchange instrument, or interest rate swap:

(i) The reporting counterparty, as determined pursuant to § 45.8, must report all primary economic terms data for the swap, within the applicable reporting deadline set forth in paragraph (c)(1)(i)(A) or (B) of this section. However, if the swap is voluntarily submitted for clearing and accepted for clearing by a derivatives clearing organization before the applicable reporting deadline set forth in paragraphs (c)(1)(i)(A) or (B) of this section, and if the swap is accepted for clearing before the reporting counterparty reports any primary economic terms data to a swap data repository, then the reporting counterparty is excused from reporting required swap creation data for the swap.

(A) If the non-reporting counterparty is a swap dealer, a major swap participant, or a non-SD/MSP counterparty that is a financial entity as defined in CEA section 2(h)(7)(C), or if the non-reporting counterparty is a non-SD/MSP counterparty *that is not a financial entity as defined in CEA section 2(h)(7)(C)* and verification of primary economic terms occurs electronically, then the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than: one hour after execution during the first year following the compliance date; and 30 minutes after execution thereafter.

(B) If the non-reporting counterparty is a non-SD/MSP counterparty *that is not a financial entity as defined in CEA section 2(h)(7)(C)*, and if verification of primary economic terms does not occur electronically, then the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than: 24 business hours after execution during the first year following the compliance date; 12 business hours after execution during the second year following the compliance date; and 30 minutes after execution thereafter.

(ii) If the swap is accepted for clearing by a derivatives clearing organization, the derivatives clearing organization must report all confirmation data for the swap, as defined in part 39 and in § 45.1, as soon as technologically practicable after clearing. The derivatives clearing organization shall fulfill this requirement by reporting all confirmation data for the swap, as defined in part 39 and in this § 45.1, which must include all primary economic terms data for the swap as defined in § 45.1, and must include the internal identifiers assigned by the automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house.

(iii) If the swap is not voluntarily submitted for clearing, the reporting counterparty must report all confirmation data for the swap, as defined in § 45.1, as soon as technologically practicable after confirmation, but no later than: 30 minutes after confirmation if confirmation occurs electronically; or 24 business hours after confirmation if confirmation does not occur electronically. During the first 180 calendar days following the compliance date, if reporting confirmation data normalized in data fields is not yet technologically practicable for the reporting counterparty, the reporting counterparty may report confirmation data to the swap data repository by transmitting to the swap data repository an image of the document or documents constituting the confirmation, until such time as electronic reporting of confirmation data is technologically practicable for the reporting counterparty. Beginning 180 days after the compliance date, the reporting counterparty must report all confirmation data to the swap data repository electronically.

(2) *Other commodity swaps.* For each such other commodity swap:

(i) The reporting counterparty, as determined pursuant to § 45.8, must report all primary economic terms data for the swap, within the applicable reporting deadline set forth in paragraph (c)(2)(i)(A) or (B) of this section. However, if the swap is voluntarily submitted for clearing and accepted for clearing by a derivatives clearing organiza-

nization before the applicable reporting deadline set forth in paragraphs (c)(2)(i)(A) or (B) of this section, and if the swap is accepted for clearing before the reporting counterparty reports any primary economic terms data to a swap data repository, then the reporting counterparty is excused from reporting required swap creation data for the swap.

(A) If the non-reporting counterparty is a swap dealer, a major swap participant, or a non-SD/MSP counterparty that is a financial entity as defined in CEA section 2(h)(7)(C), or if the non-reporting counterparty is a non-SD/MSP counterparty *that is not a financial entity as defined in CEA section 2(h)(7)(C)* and verification of primary economic terms occurs electronically, then the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than: four hours after execution during the first year following the compliance date; and two hours after execution thereafter.

(B) If the non-reporting counterparty is a non-SD/MSP counterparty *that is not a financial entity as defined in CEA section 2(h)(7)(C)*, and if verification of primary economic terms does not occur electronically, then the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than: 48 business hours after execution during the first year following the compliance date; 24 business hours after execution during the second year following the compliance date; and two hours after execution thereafter.

(ii) If the swap is accepted for clearing by a derivatives clearing organization, the derivatives clearing organization must report all confirmation data for the swap, as defined in part 39 and in § 45.1, as soon as technologically practicable after clearing. The derivatives clearing organization shall fulfill this requirement by reporting all confirmation data for the swap, as defined in part 39 and in this § 45.1, which must include all primary economic terms data for the swap as defined in § 45.1,

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and must include the internal identifiers assigned by the automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house.

(iii) If the swap is not voluntarily submitted for clearing, the reporting counterparty must report all confirmation data for the swap, as defined in § 45.1, as soon as technologically practicable after confirmation, but no later than: 30 minutes after confirmation if confirmation occurs electronically; or 24 business hours after confirmation if confirmation does not occur electronically. During the first 180 calendar days following the compliance date, if reporting confirmation data normalized in data fields is not yet technologically practicable for the reporting counterparty, the reporting counterparty may report confirmation data to the swap data repository by transmitting to the swap data repository an image of the document or documents constituting the confirmation, until such time as electronic reporting of confirmation data is technologically practicable for the reporting counterparty. Beginning 180 days after the compliance date, the reporting counterparty must report all confirmation data to the swap data repository electronically.

(d) *Off-facility swaps not subject to mandatory clearing, with a non-SD/MSP reporting counterparty.* For all off-facility swaps not subject to the mandatory clearing requirement set forth in CEA section 2(h), all off-facility swaps for which the clearing requirement exception in CEA section 2(h)(7) has been elected, and all off-facility swaps covered by CEA section 2(a)(13)(C)(iv), in all asset classes, for which a non-SD/MSP counterparty is the reporting counterparty, required swap creation data must be reported as provided in this paragraph (d).

(1) The reporting counterparty, as determined pursuant to § 45.8, must report all primary economic terms data for the swap, as soon as technologically practicable after execution, but no later than: 48 business hours after execution during the first year following the compliance date; 36 business hours after execution during the second year

following the compliance date; and 24 business hours after execution thereafter. However, if the swap is voluntarily submitted for clearing and accepted for clearing by a derivatives clearing organization before the applicable reporting deadline set forth in this paragraph (d)(1), and if the swap is accepted for clearing before the reporting counterparty reports any primary economic terms data to a swap data repository, then the reporting counterparty is excused from reporting required swap creation data for the swap.

(2) If the swap is accepted for clearing by a derivatives clearing organization, the derivatives clearing organization must report all confirmation data for the swap, as defined in part 39 and in § 45.1, as soon as technologically practicable after clearing. The derivatives clearing organization shall fulfill this requirement by reporting all confirmation data for the swap, as defined in part 39 and in this § 45.1, which must include all primary economic terms data for the swap as defined in § 45.1, and must include the internal identifiers assigned by the automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house.

(3) If the swap is not voluntarily submitted for clearing, the reporting counterparty must report all confirmation data for the swap, as defined in § 45.1, as soon as technologically practicable after confirmation, but no later than: 48 business hours after confirmation during the first year following the compliance date; 36 business hours after confirmation during the second year following the compliance date; and 24 business hours after confirmation thereafter. During the first 180 calendar days following the compliance date, if reporting confirmation data normalized in data fields is not yet technologically practicable for the reporting counterparty, the reporting counterparty may report confirmation data to the swap data repository by transmitting to the swap data repository an image of the document or documents constituting the confirmation, until such time as electronic reporting of confirmation data is technologically

practicable for the reporting counterparty. Beginning 180 days after the compliance date, the reporting counterparty must report all confirmation data to the swap data repository electronically.

(e) *Allocations.* For swaps involving allocation, required swap creation data shall be reported to a single swap data repository as follows.

(i) *Initial swap between reporting counterparty and agent.* The initial swap transaction between the reporting counterparty and the agent shall be reported as required by § 45.3(a) through (d) of this part. A unique swap identifier for the initial swap transaction must be created as provided in § 45.5 of this part.

(ii) *Post-allocation swaps.* (A) *Duties of the agent.* In accordance with this section, the agent shall inform the reporting counterparty of the identities of the reporting counterparty's actual counterparties resulting from allocation, as soon as technologically practicable after execution, but not later than eight business hours after execution.

(B) *Duties of the reporting counterparty.* The reporting counterparty must report all required swap creation data for each swap resulting from allocation, to the same swap data repository to which the initial swap transaction is reported, as soon as technologically practicable after it is informed by the agent of the identities of its actual counterparties. The reporting counterparty must create a unique swap identifier for each such swap as required in § 45.5 of this part.

(C) *Duties of the swap data repository.* The swap data repository to which the initial swap transaction and the post-allocation swaps are reported must map together the unique swap identifiers of the original swap transaction and of each of the post-allocation swaps.

(f) *Multi-asset swaps.* For each multi-asset swap, required swap creation data and required swap continuation data shall be reported to a single swap data repository that accepts swaps in the asset class treated as the primary asset class involved in the swap by the swap execution facility, designated contract

market, or reporting counterparty making the first report of required swap creation data pursuant to this section. The registered entity or reporting counterparty making the first report of required swap creation data pursuant to this section shall report all primary economic terms for each asset class involved in the swap.

(g) *Mixed swaps.* (1) For each mixed swap, required swap creation data and required swap continuation data shall be reported to a swap data repository registered with the Commission and to a security-based swap data repository registered with the Securities and Exchange Commission. This requirement may be satisfied by reporting the mixed swap to a swap data repository or security-based swap data repository registered with both Commissions.

(2) The registered entity or reporting counterparty making the first report of required swap creation data pursuant to this section shall ensure that the same unique swap identifier is recorded for the swap in both the swap data repository and the security-based swap data repository.

(h) *International swaps.* For each international swap, the reporting counterparty shall report as soon as practicable to the swap data repository the identity of the non-U.S. trade repository not registered with the Commission to which the swap is also reported and the swap identifier used by the non-U.S. trade repository to identify the swap. If necessary, the reporting counterparty shall obtain this information from the non-reporting counterparty.

§ 45.4 Swap data reporting: continuation data.

Registered entities and swap counterparties must report required swap continuation data electronically to a swap data repository as set forth in this section. This obligation commences on the applicable compliance date set forth in the preamble to this part. The reporting obligations of registered entities and swap counterparties with respect to swaps executed prior to the applicable compliance date and in existence on or after July 21, 2010, the date of enactment of the Dodd-Frank Act, are set forth in part 46 of this chapter. This